

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

UNITED STATES OF AMERICA,	:	Case No. CR-1-02-143
	:	
Plaintiff,	:	Judge Dlott
	:	
v.	:	
	:	
SAMUEL P. NICKOLAS,	:	<u>MOTION TO WITHDRAW AS</u>
	:	<u>COUNSEL</u>
Defendant.	:	

W. Kelly Johnson, pursuant to Rule 83.5 of the Rules of the United States District Court for the Southern District of Ohio, respectfully moves this Court for an order allowing him to withdraw as counsel in the above matter. Counsel submits that his withdrawal as counsel is required due to the fact that the Court has determined that Defendant Nickolas does not qualify for appointed counsel, based upon his financial situation.

As background, the Federal Public Defender's Office was appointed to represent Defendant Nickolas on a Supervised Release Violation on January 27, 2005. Counsel had also been appointed to represent Mr. Nickolas on the original criminal charge.

On October 24, 2005, sentencing on the Supervised Release Revocation was held before this Court. At the onset of this hearing, the Court concluded that

Defendant Nickolas did not financially qualify for the appointment of counsel, based upon his family's financial situation, and suggested that the magistrate judge had committed error in appointing the Federal Public Defender's Office to represent Nickolas. On that same date, Nickolas was sentenced to a period of six months of incarceration, to be followed by 30 months of an additional term of Supervised Release.

Subsequent to the sentencing hearing, counsel was notified by Mr. Nickolas that he wishes to appeal his conviction and sentence to the United States Court of Appeals for the Sixth Circuit. Due to the fact that this court determined on October 24, 2005 that Mr. Nickolas did not qualify for appointed counsel, Attorney Johnson asserts that he may not proceed with the prosecution of an appeal because Nickolas does not qualify for Federal Public Defender assistance.

Therefore, Attorney Johnson respectfully requests that this Court allow him to withdraw as counsel in the appeal this matter.

Respectfully submitted,

STEVEN S. NOLDER,
ACTING FEDERAL PUBLIC DEFENDER

s/W. Kelly Johnson

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Counsel for Defendant
Samuel P. Nickolas

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon Amul Thapar, Assistant United States Attorney, by electronic filing and on Samuel P. Nickolas by regular U.S. mail, postage paid, on October 31, 2005.

s/W. Kelly Johnson

W. Kelly Johnson